

**APPROVED MINUTES  
YORK COUNTY PLANNING COMMISSION**

Special Meeting  
York Hall  
June 6, 2001  
7:00 PM

**MEMBERS**

Spencer W. Semmes, Chair  
Andrew A. Simasek, Vice Chair  
Robert E. Beil, Jr.  
Robert D. Heavner  
Michael H. Hendricks  
Thomas G. Shepperd  
Ann F. White

**CALL TO ORDER**

Chair Spencer Semmes called the special meeting to order at 7:00 p.m. All of the members were present. Staff members present were J. Mark Carter and James E. Barnett, Jr.

**PUBLIC HEARING**

**Application No. ZT-56-01, York County Board of Supervisors:** Request to amend Chapter 24.1, Zoning, York County Code, to revise the definition of the term "marina" and to establish certain performance standards for "eating facilities" associated with marinas.

Mr. Mark Carter briefed the Commission on the origin of the application, the previous discussions by the Planning Commission, the extensive discussions of the 10-person committee that deliberated the issue over the course of four meetings, and the alternate draft prepared to reflect the committee's discussions and consensus. He noted that the committee had not reached consensus on many issues, but that the discussion had been very valuable and had served as a framework for some of the compromise proposals contained in the alternate draft.

Chair Semmes explained that the application before the public is a request for a text amendment to the Zoning Ordinance, not targeted to any particular individual or existing business. Because of the number of people signed up to speak, all speakers are expected to limit their comments to the allotted three minutes during the public hearing, Mr. Semmes said, and he opened the public hearing.

**Mr. Gary Woods**, 796 Darden Drive, Newport News, noted "they started the marina with nothing," have hired a number of teenagers, spend a lot of money in the County and don't deserve to be shut down.

**Mr. Rusty Woods**, 216 Timberline Loop, said he wanted the County to be forward-thinking and continue to thrive and not thwart competition among businesses.

**Ms. Ethel Sparrer Campbell**, 528 Sparrer Road, stated that she does not want a marina or a restaurant in her neighborhood.

**Ms. Myra McCain**, 415 Sparrer Road, requested that this application be abandoned and that the existing ordinance language be retained. She did not believe "either side" wanted the proposed revisions because both believe that the present Zoning Ordinance is beneficial to their own situations. She added that there was no consensus of ideas at the citizens' committee meetings; the resulting draft is inconsistent, poorly worded, and so vague that it is unenforceable; marina neighbors throughout the County had no notice that the changes were being considered except for unclear legal notices. Tempers on both sides have flared, Ms. McCain said, and she did not think that some citizens would come forward to speak in the present atmosphere of threat and intimidation. She commented on specific language that bar-restaurants should not be permitted by right in a WCI district; and a bar-restaurant should be permitted only as an accessory to a marina.

**Ms. Susan Sparrer**, 516 Sparrer Road, read the current Zoning Ordinance definition of a marina and noted that it limits the size of "eating facility" to protect neighboring residents from additional noise, traffic and other nuisances. She added that marinas are generally accessible from narrow roads, have limited parking area, and three or four sides of their properties face homes. She said noise should be an important consideration because of the water that separates many residents from marinas. Ms. Sparrer added that a restaurant made available for meetings, private parties and receptions would not be acceptable to residents in the WCI zoning district and she supported permitting marina-restaurants only by special use permit. Public restaurants are not allowed within existing neighborhoods anywhere else in York County, she concluded.

**Mr. Kris Nunn**, 107 Kitty Drive, was opposed to revising the Ordinance because the present one is well thought-out.

**Ms. Lillian Smith**, 811 Railway Road, where she has resided since 1948, described the quiet neighborhood where she reared her children. Ms. Smith was opposed to allowing a restaurant in a WCI district that is surrounded by residences because of attendant noise, odors, traffic, and devaluation of residential property values.

**Mr. Jim Strong**, 8 Rue deGrasse, Poquoson, said he was on the citizens' committee as a partner in AquaMarine. Referring to the committee's proposal for Section 24.1-462(d)(1), he believed that to use a 20-slip marina as the minimum size for permitting a restaurant by right artificially limits the size of a restaurant at that marina; other zoning districts in the County base [restaurant] size on such parameters as parking and setbacks, he added. He also questioned any distinction between wet and dry slips. He said that a restaurant capacity is normally based on 25 to 40 square feet per seat rather than the 15 square feet proposed in the committee draft. Mr. Strong then referred to Section 24.1-462(d)(2)(-a). He suggested that "normal zoning separations" are far less than the proposed distances and suggested that, where commercial enterprises abut neighborhoods, a 50-foot separation would be a reasonable compromise. He felt the County should explore ways other than just distance to determine appropriate separation of residents from the restaurant's principal and service entrances.

**Mr. J. D. Brewer**, 831 Railway Road, his home since 1944, was opposed to any eating facility permitted by right other than a snack bar. He said to allow a restaurant except by special use permit is absurd and wouldn't be done in Coventry or other residential areas in the County.

**Mr. Melvin Gendron**, 823 Railway Road, stated that the WCI zoning district was designed to maintain some compatibility between commercial and residential areas on water-oriented lands. Now, it appears the County wants to go back to a strictly commercial area, in which case it may as well eliminate the WCI district. He said performance standards have not been established and are left to judgment, meaning that consistent and proper enforcement would be questionable. He wanted the County to provide for enforcement so neighbors of the restaurant wouldn't be responsible for reporting problems and being "the bad guys." He proposed that noise and odors created by garbage and refuse be buffered from residents in some measurable way.

**Ms. Barbara Higginbotham**, 300 Dandy Loop, owns and operates Byrds by the Bay Marina. Ms. Higginbotham believed that restricting restaurants to those marinas with 20 or more slips would keep small marinas out of business. She said if marinas with fewer than 20 slips can broker boat sales and sell gas and other retail items, they should be able to operate a restaurant. She questioned permitting a marina-restaurant operation, but not boat repair, based on its number of boat slips.

**Mr. Jim Vaughn**, 512 Wildey Road, said as a partner in AquaMarine he is afraid that he could lose the property he purchased with all of his savings. He said he had a letter from York County stating that he could operate his marina under the current zoning regulations. Now, he continued, the County wants to initiate performance standards that would restrict his operation and ultimately devalue his property. It is important to be able to use his 1500-square-foot facility for a planned eating facility, he said, and adoption of the proposed amendment would not permit that. Mr. Vaughn said the County should not revise the Zoning Ordinance for the entire County just because a few people don't want a restaurant at Dare Marina. He also thought that a marina with a restaurant would enhance surrounding property values, unlike some citizens who think their own properties would lose value in such a scenario. Mr. Vaughn was strongly opposed to the revision because it would not allow him to use his property the way he could have when he purchased it, and he could lose all of his savings and future retirement income.

**Patrick Pettitt, Esquire**, 201 Autumn Way, represented Ms. Higginbotham. He referred to the proposal, item (d)(1), prohibiting marinas with fewer than 20 slips from having a restaurant without a use permit and suggested eliminating that language. He did not believe citizens have complained about impacts from as small a marina as his client's. Mr. Pettitt recommended allowing four seats for every wet slip instead of three, primarily because traditional boats seat a minimum of four people. Mr. Pettitt recommended revisions to the language concerning the Board modifying or waiving standards "for good cause shown" rather than "where no other practicable alternative exists."

**Mr. Ed Dickenson**, 112 Creek Circle, thought that singling out marina operators was discriminatory. He said enforcing it will result in zero growth.

**Mr. Helmut Walter**, 119 Larchwood Road, represented Seaford Yacht Club and its more than 200 members or their family. The Club reiterates the stand it took in March favoring restaurants at marinas, but Mr. Walter thought the proposed size was restrictive. He also expressed concern about language that refers to "club" or "private marinas." He was opposed to language that could confuse the word "restaurant" with meeting rooms that support kitchens, because they are not the same.

**Ms. Nancy Nunn**, 801 Railway Road, does not support the text amendment but supports the current Zoning Ordinance or a special use permit to allow marina restaurants because each use permit application allows public input.

**Mr. Mike Hanna**, 6 Freemoor Drive, Poquoson, who is associated with Dare Marina, submitted a petition containing the signatures of 151 York County residents, which reads:

*The undersigned individuals herein request the York County Planning Commission and Board of Supervisors to reject the adoption of the proposed Zoning Ordinance amendment as contained in the Board's resolution R01-29 dealing with the definitions of "marina" and "eating facilities." We believe that the establishment of such facilities will become an asset to York County and are a part of the development and evolution of the marina businesses in the community. We further believe that existing Federal, State and County regulations are adequate to address relevant development issues.*

Mr. Hanna also submitted six letters and several emails from York County residents expressing support of Dare Marina's plans "to continue with its deliberate progress in implementing improvements to the Marina which include 'eating facilities'."

All of the above-mentioned documents, as well as a number of communications from non-York County residents which Mr. Hanna also submitted, are attached to the minutes of record.

**Mr. Pat Milmoie**, one of the owners of Dare Marina, 821 Railway Road, said he thinks the County has done a good job trying to blend divergent views but the amendment was initially proposed to stop Dare Marina's plans and now all of the other marinas have been "swallowed up in it." He believed that the proposal needs a great deal of work, despite everyone's best intentions, and that it could seriously affect the viability of other, smaller marinas. He asked the County to take plenty of time to reflect on all of the comments expressed by the public, then either change the current proposal or withdraw the application.

**Mr. Cason Barco**, partner in Dare Marina, 821 Railway Road, noted that all WCI properties are permitted eating facilities by right and he did not believe the County should impose severe prohibitions on marina eating facilities. Mr. Barco suggested that a 10:00 p.m. restaurant closing time would be inconvenient for boaters to visit the restaurant during the summer and recommended summer hours extending to 11:00 p.m. He wanted to be sure that patrons who were in the restaurant facility before closing time would be able to be fully served.

**Mr. Greg Brezinski**, 3630 George Washington Memorial Highway, said he was one of two individuals on the citizens' committee representing Goodwin Island Marina. He thought there was a consensus of both marina operators and homeowners that the proposed amendment was not satisfactory. He stated that the committee had discussed at great length the issue of numbers being arbitrarily applied. He stated that staff referred to the Building Code as its standard for calculating the number of square feet required for each allowed restaurant seat but Mr. Brezinski believed the Building Code was designed to calculate occupancy, not number of seats. He recommended that the staff or Commission refer to the manual, "Timesaver Standards for Interior Design," to review what is

normal in the restaurant business. It recommends a range of space for various uses in typical businesses, he said.

**Mr. Greg French**, 2041 Lynn Cove Lane, Virginia Beach, said he represented a group of investors who project investing \$6.2 million for the future Goodwin Island Yacht Club, an upscale, full service yacht club that would become a neighborhood and community asset to include a youth swim club and tennis team, a family swimming team, and would be used for special occasions for its members. He was concerned about some of the proposed revisions, including limiting a restaurant to fewer than 150 seats – less than exists at other private clubs in neighboring jurisdictions. Mr. French questioned Section 24.1-463(e), subjecting private or club marinas to the same requirements set out for commercial marina facilities. He asked if the clubs operated by BP-Amoco and Dominion Virginia Power, the private Seaford Yacht Club, and potential golf clubs would be bound by the same requirements. Mr. French was skeptical that future investors would want to locate in the County under the same restrictions.

**Mr. Kerry Nunn**, 801 Railway Road, was appreciative of the work accomplished by the Board, Commission, staff and citizens' committee. He pointed out that each WCI-zoned property is unique, as are the existing neighborhoods within the district. It would be difficult, he believed, to agree upon a standard that worked to everyone's best interests. He supported special use permits to allow restaurants as accessories to marinas.

**Mr. Allen Bradshaw**, 429 Railway Road, did not believe a business in the WCI zone should be allowed to operate a restaurant as a matter of right but, if allowed to do so, it should be only by special use permit. He said restaurants can have significant detrimental effects on nearby residents and they should be evaluated on a case-by-case basis.

**Mr. John Matthews**, 101 Mill Road, owns a business in York County and represents York County Marine Trades Association. He noted a letter (copy attached) he had submitted for the record, which addressed a number of issues that he discussed briefly.

**Mr. Robert Logan**, 306 Smoots Lane, was opposed to any additional building, he said, because of his belief that the performance standards are all too subjective. He said the County's best efforts to reach a consensus had failed and he would like to know what recourse is available. He thought the increased boat traffic on Chisman Creek would further impact people who live on the Creek.

**Mr. Emmitt Short**, 107 Wakemore Place, said he has operated a business in York County for more than 15 years. He recommended that the Commission consider growth in the County and the citizens' need for good eating places. A seating capacity of 150 is not adequate, he added, and he thought the proposal placed too many restrictions on marinas.

**Mr. Ken Bowman**, 109 York Point Drive, spoke as president of York Point Homeowners Association and as a member of Seaford Yacht Club. He said their support to allow restaurants remains as strong as ever.

**Mr. Donnie Shinn**, 826 Railway Road, said he has observed development of Dare Marina from the beginning. He said it had been a "real eyesore." He appreciated the work and money that have gone

into it but questioned how much more the residents should be asked to endure. How much more, he asked, can that piece of property withstand without drastically impacting the neighborhood?

No others indicated a desire to speak, and Chair Semmes closed the public hearing.

Chair Semmes clarified that the committee's proposed draft was intended to guide development by providing standards for developing properties in the WCI zoning district but was never intended to put anyone out of business.

Mr. Hendricks said he believes even more strongly now that the only way to approach this issue is by special use permit. He believes every application should go through a special use permit process to get the community to state its concerns or support and to tailor each application to a specific site and for a specific operation. He is neither anti-growth nor anti-residential, he said, but everyone has certain needs and rights that must be considered. He supported the second draft as amended by the Planning Commission on May 2, 2001.

Mr. Simasek believed that the current proposal is arbitrary in several ways but there are limitations on what the Commission can recommend. He thought that fairly regulating six marinas with distinctly different characteristics and settings could be done only by special use permit.

Mr. Shepperd did not agree with recommending special use permits because he believes an investor should know exactly what will be expected from the beginning. The County does not require a special use permit for every property on Route 17, he noted, but is deliberating a proposal to impose different restrictions on investors in the WCI district. The cost to go through the use permit process is not insignificant, he continued.

Mr. Simasek reminded that the discussion centers on uses in the WCI district to the exclusion of all other districts.

Mr. Shepperd said that if standards are going to be adopted for restaurants, they should be the same for all restaurants in the County. It will affect taxes.

Mr. Semmes asked the members to focus their discussion on the draft dated May 30, 2001, produced in response to the citizens' committee discussion. He recapped the major points contained in the proposal. He felt that, with a little revision, the draft is the best that the Commission can recommend for by-right development of water-oriented eating facilities.

Mr. Heavner pointed out differences between the WCI district and Route 17 business districts including roadway accessibility and existing infrastructure.

Mr. Shepperd proposed that the Commission recommend to the Board the draft proposal dated May 30, 2001. Mr. Semmes agreed with Mr. Shepperd and Mr. Hendricks did not agree. Mr. Hendricks proposed voting on each of the proposals in the order in which they were presented to the Commission, until one of them passes, beginning with the Board of Supervisors' proposal contained in Resolution PC01-12.

Mr. Hendricks moved to recommend approval of previous Resolution PC01-12. By roll call vote, the motion was defeated unanimously (7:0).

Mr. Semmes directed the Commission's attention to the citizens' committee Alternate Draft of May 30, 2001. Following extensive discussion, several items were proposed for revision, including:

- refining the definition of "marina"
- adding the term "berth" to supplement "slip"
- redefining "wet slip" as "in-water wet slip or berth"
- raising the number of allowable restaurant seats from three to four for every in-water slip
- defining a 20-slip marina as one capable of accommodating at least twenty (20) 16-foot recreational boats
- ensuring that patrons who enter the restaurant by closing time will be allowed full service
- changing the noise standards to refer to Section 16-19 of the York County Code relating to noise

Mr. Semmes then polled the members as to whether they wanted to discuss the Planning Commission alternate proposal dated May 2, 2001. The consensus was they did not.

Mr. Hendricks moved adoption of the draft identified as Attachment #5, Alternate Draft dated May 30, 2001, as modified by the Planning Commission discussion. The vote was as follows:

Yes: Messrs. Beil, Heavner, Semmes and Mrs. White

No: Messrs. Hendricks, Shepperd and Simasek

## **ADJOURNMENT**

Chair Semmes called adjournment at 10:05 p.m.

SUBMITTED: \_\_\_\_\_/s/\_\_\_\_\_  
Phyllis P. Liscum, Secretary

APPROVED: \_\_\_\_\_/s/\_\_\_\_\_  
Spencer W. Semmes, Chair

DATE: July 11, 2001